State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

NOTICE OF EMERGENCY REGULATORY ADOPTION

Finding of Emergency and Informative Digest

Subject Matter of Regulations: Workers' Compensation – Description of Disabilities, Primary Treating Physician Reporting Requirements, Schedule for Rating Permanent Disabilities

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, proposes to amend Articles 2, 5 and 7 of Chapter 4.5, Subchapter 1, and Subchapter 1.6, of Title 8, California Code of Regulations, commencing with section 9725. This action is necessary in order to implement, on an emergency basis, Labor Code sections 4660 as amended, and sections 4663 and 4664 as added to the Labor Code, by Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004).

Finding of Emergency

The Administrative Director of the Division of Workers' Compensation finds that the proposed regulations attached hereto are necessary for the immediate preservation of the public peace, health and safety or general welfare.

Section 49 of Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004), which amended and enacted the statutes that provide the basis for the regulations proposed herein provides:

> "This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:
>
> In order to provide relief to the state from the effects of the current workers' compensation crisis at the earliest possible time, it is necessary for this act to take effect immediately."

Statement of Emergency

One of the chief concerns about the California workers' compensation system is that it is too costly. The total annual costs of the system more than doubled from 1995 to 2002, growing from about $9.5 billion to about $25 billion. (Commission on Health and Safety and Workers'

Compensation, Workers' Compensation Medical Care in California: Costs, Fact Sheet Number 2, August 2003, http://www.dir.ca.gov/chswc/WC_factSheets/WorkersCompFSCost.pdf.) The California Workers' Compensation Insurance Rating Bureau estimated rates for the 3rd quarter of 2003 at $6.33/$100 and projected that absent recently enacted reforms, rates for the 2004 policy year would be $7.08/$100, a level never approached before in any state (The California Workers' Compensation Insurance Rating Bureau, 2003). These numbers illustrate that the workers' compensation system imposes severe costs on employers in California, more so than any other state. (*Evaluation of California's Permanent Disability Rating Schedule,* Interim Report, December 2003, RAND Institute for Civil Justice, Reville, Robert T., Seabury Seth, Neuhauser, Frank, http://www.rand.org/publications/DB/DB443/DB443.pdf.)

Data from the California Workers' Compensation Rating Bureau (WCIRB, 2003a) reflect that over 90% of indemnity costs and approximately 80% of medical costs for California workers' compensation were incurred on permanent partial disability (PPD) claims. Much of the controversy focuses on the PPD rating schedule. The rating schedule is used to convert the medical evaluation of an impairment into a quantitative measure of the severity of the disability. This measure, the disability rating, is then converted into a benefit amount based on the pre-injury wage. Higher ratings translate into higher benefits, reflecting the fact that we expect more-serious injuries to have a more-disabling effect on a person's ability to work. Critics of the PPD system often point to the rating system as driving litigation in California. (*Evaluation of California's Permanent Disability Rating Schedule,* Interim Report, December 2003, RAND Institute for Civil Justice, Reville, Robert T., Seabury Seth, Neuhauser, Frank, http://www.rand.org/publications/DB/DB443/DB443.pdf.)

In response to the state of California's widely-acknowledged workers' compensation crisis, the Legislature passed Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included several provisions designated to control workers' compensation costs, including the amendment of Labor Code section 4660, which provides for substantive revisions that change the permanent disability rating schedule by eliminating subjective factors of disability and work restrictions and using objective medical conditions and wage loss data to determine disability. Senate Bill 899 further repealed Sections 4663, 4750, and 4750.5, and added a new Section 4663 and Section 4664, addressing apportionment of permanent disability and establishing 100% caps on permanent disability for specified regions of the body.

In the workers' compensation system, workers who are permanently disabled by industrial injuries or illnesses are entitled to indemnity, the amount of which is based on percentages of permanent disability as set forth in a permanent disability rating schedule. Based on this schedule, more serious levels of permanent disability correspond with higher percentages and greater compensation. (See generally, Labor Code sections 4650-4664.) Generally, a rating is determined for an injured worker by the Disability Evaluation Unit of the Division of Workers' Compensation, or by a Workers' Compensation Administrative Law Judge, or by agreement of the parties. A disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity while 100% represents *total* permanent disability. Total permanent disability generally describes that level at which an employee has sustained a total loss of earning capacity. Permanent partial disability is represented by ratings between 0% and 100%. Some impairments

are conclusively presumed to be totally disabling. (Lab. Code, §4662.) The amount of compensation is then determined by Labor Code sections 4658 and 4659, see also, Labor Code sections 4451-4459.

Senate Bill 899 made several substantive revisions to Labor Code section 4660 that are required to be implemented by January 1, 2005, discussed below.

Labor Code section 4660(a), as amended by Senate Bill 899, now provides that in determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

Labor Code section 4660(b)(1) provides that for purposes of the section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).

Labor Code section 4660(b)(2) provides that, for purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The Administrative Director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

Labor Code section 4660(c) requires the Administrative Director to amend the permanent disability rating schedule at least once every five years.

Labor Code section 4660(d) provides that the schedule shall promote consistency, uniformity, and objectivity, and that any revision made thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule. Labor Code section 4660(d) further provides that for compensable claims arising before January 1, 2005, the schedule as revised shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

Labor Code section 4660(e) requires the Administrative Director adopt regulations to implement the changes made to this section by Senate Bill 899 on or before January 1, 2005.

In Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004), the Legislature further repealed Section 4663, and added new Section 4663 which provides that apportionment of permanent disability shall be based on causation. Section 4663 requires the physician preparing a report addressing the issue of permanent disability due to a claimed industrial injury to address

the issue of causation of the permanent disability. Section 4663 further requires that in order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. The physician is required to make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of the injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. Section 4663 also requires that upon request, the injured worker claiming an industrial injury disclose all previous permanent disabilities or physical impairments.

Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004) also added new Section 4664 to the Labor Code. Section 4664 provides that the employer is only liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. It further provides that if the injured worker has received a prior award of permanent disability, it is conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury, and the presumption is a presumption affecting the burden of proof. Further, Labor Code section 4664 provides that the accumulation of all permanent disability awards issued for specified regions of the body is not to exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662, and prohibits a cumulative permanent disability rating over 100% for each individual injury sustained by an employee arising from the same industrial accident.

The aforesaid Labor Code sections are not self-executing. If the Administrative Director does not timely implement the changes mandated by Senate Bill 899, the workers' compensation system will continue to be based on a permanent disability rating schedule that is based on subjective factors of disability and work restrictions, resulting in continued, increased costs to California's workers' compensation system. A major component of this legislative change is the use of the AMA Guides. The Administrative Director's proposed schedule is necessary to apply the diminished future earning capacity, occupation and age adjustments to convert whole person impairment ratings under the AMA Guides into disability ratings. Failure to timely implement this schedule will likely result in continued, increased costs in the workers' compensation system.

The regulations (1) clarify the method for determining percentages of permanent disability is set forth in the Schedule for Rating Permanent Disabilities effective January 1, 2005, incorporating by reference the permanent disability rating schedule which incorporates the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, 5th Edition, (2) define applicable terms related to the statutes, (3) clarify when the permanent disability evaluations conducted by the physicians must be performed in accordance with the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, and (4) amend the forms used by the primary treating physician to comply with reporting duties as they are impacted by the requirements of the section 4660, including the form used by the primary treating physician to report on the permanent and stationary status of the injured worker's condition.

The aforementioned treating physician forms clarify which form is to be used with the 2005 permanent disability rating schedule and which are to be used with the 1997 permanent disability rating schedule. The forms are also amended to include requirements pertaining to the rating of impairments under the AMA Guides under section 4660, and apportionment sections 4663 and 4664.

Other proposed regulations (1) clarify the manner in which the Disability Evaluation Unit, under the authority of the Administrative Director will issue permanent disability ratings consistent with the 2005 permanent disability rating schedule, (2) clarify when a disability is considered permanent, (3) amend Disability Evaluation Unit's (DEU) apportionment referral form, and (4) amend DEU's Notice form after a permanent disability rating.

The Administrative Director has therefore determined that the emergency adoption of the proposed regulations is necessary for the immediate preservation of the public peace, health and safety or general welfare.

Authority and Reference

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, 4660 and 5307.3. Reference is to Labor Code sections 4061.5, 4600, 4603.2, 4610, 4636, 4660, 4662, 4663, and 4664.

Informative Digest

These regulations are required by a legislative enactment - Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included an amendment to Labor Code section 4660, which provides for the development of a new permanent disability rating schedule, and Labor Code sections 4663 and 4664, which address the apportionment of permanent disability and the establishment of a 100% cap on permanent disability awards for specified regions of the body.

Labor Code section 4660(a) provides that in determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

Labor Code section 4660(b)(1) provides that, for purposes of the section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).

Labor Code section 4660(b)(2) provides that for purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the

adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

Labor Code section 4660(c) provides that the administrative director shall amend the schedule for the determination of the percentage of permanent disability in accordance with this section at least once every five years. The schedule shall be available for public inspection and, without formal introduction in evidence, shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule.

Labor Code section 4660(d) provides that the schedule shall promote consistency, uniformity, and objectivity. The schedule and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule, amendment or revision, as the fact may be. For compensable claims arising before January 1, 2005, the schedule as revised pursuant to changes made in legislation enacted during the 2003-04 Regular and Extraordinary Sessions shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

Labor Code section 4660(e) requires the Administrative Director adopt regulations to implement the changes made to the section by the act on or before January 1, 2005.

Labor Code section 4663(a) provides that apportionment of permanent disability shall be based on causation.

Labor Code section 4663(b) provides that any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

Labor Code section 4663(c) provides that in order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

Labor Code section 4663(d) provides that an employee who claims an industrial injury shall,

upon request, disclose all previous permanent disabilities or physical impairments.

Labor Code section 4664(a) provides that the employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.

Labor Code section 4664(b) provides that if the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

Labor Code section 4664(c)(1) provides that the accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in the section, the regions of the body are the following:

(A) Hearing.

(B) Vision.

(C) Mental and behavioral disorders.

(D) The spine.

(E) The upper extremities, including the shoulders.

(F) The lower extremities, including the hip joints.

(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

Labor Code section 4664(2) provides that nothing in the section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.

1. Section 9725. Method of Measurement.

Section 9725, as amended, provides that this section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

2. Section 9726. Method of Measurement (Psychiatric).

Section 9626, as amended, provides that this section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

3. Section 9727. Subjective Disability.

Section 9727, as amended, provides that this section does not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

4. 9785. Reporting Duties of the Primary Treating Physician.

Section 9785(a)(1), as amended, provides that the primary treating physician is the physician who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter. The primary treating physician is the physician selected by the employer or the employee pursuant to Article 2 (commencing with section 4600) of Chapter 2 of Part 2 of Division 4 of the Labor Code, under the contract or procedures applicable to a Health Care Organization certified under section 4600.5 of the Labor Code, or in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616.

Section 9785(a)(8), as amended, provides that permanent and stationary status is the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

Section 9785(b)(3), as amended, provides that if the employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, or if the employee objects to a decision made pursuant to Labor Code section 4610 to modify, delay, or deny a treatment recommendation, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062. It further provides that no other primary treating physician shall be designated by the employee unless and until the dispute is resolved.

Section 9785(b)(4), as amended, provides that if the claims administrator disputes a medical determination made by the primary treating physician, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4610, 4061 and 4062.

Section 9785(g), as amended, provides that when the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall, unless good cause is shown, report within 20 days from the date of examination any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury. The information may be submitted on the "Primary Treating Physician's Permanent and Stationary Report" form (Form PR-3 or PR-4) contained in

Section 9785.3, or in such other manner which provides all the information required by Title 8, California Code of Regulations, section 10606. It further provides that for permanent disability evaluations performed pursuant to the permanent disability evaluation schedule adopted on or after January 1, 2005, the primary treating physician's reports concerning the existence and extent of permanent impairment shall describe the impairment in accordance with the AMA Guides to the Evaluation on Permanent Impairment, 5th Edition (Form PR-4). It also provides that Qualified Medical Evaluators and Agreed Medical Evaluators may not use Form PR-3 to report medical-legal evaluations.

5. 9785.2. Primary Treating Physician's Progress Report (PR-2).

Primary treating physicians are required to submit treatment reports, using either the Primary Treating Physician's Progress Report form (DWC Form PR-2) set forth in Section 9785.2, or in a narrative format meeting specified content and format requirements.

Section 9785.2 is amended for consistency purposes to delete language referring to IMC Form 81556, which is no longer in use. DWC Form PR-2 is further amended to allow the use of this form to submit a request for authorization pursuant to the requirements of Labor Code section 4610, and to delete language regarding when the next progress report is due.

6. 9785.3. Primary Treating Physician's Permanent and Stationary Report (PR-3).

Primary treating physicians may submit their permanent and stationary reports using the Primary Treating Physician's Permanent and Stationary Report form (DWC Form PR-3) as set forth in Section 9785.3.

Section 9785.3 is amended for consistency purposes to state that the form is required to be used for ratings prepared pursuant to the 1997 Permanent Disability Rating Schedule. DWC Form PR-3 is further amended to delete the language relating to permanent and stationary status to make it consistent with the amended definition of this term in Section 9785(a)(8). DWC Form PR-3 is further amended to delete the phrase "Use of the form below is optional" since it is potentially misleading concerning the requirement for a permanent and stationary report. DWC Form PR-3 is further amended to delete language at page 10 in reference to apportionment since it based on the law prior to passage of Senate Bill 899, and to include new language on apportionment at page 13 consistent with the requirements of sections 4663 and 4664 and California Code of Regulations, Title 8, section 10151.5. This language provides that effective April 19, 2004, apportionment of permanent disability shall be based on causation. It further provides that any physician who prepares a report addressing permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability, and in order for a permanent disability report to be complete, the report must include an apportionment determination. The determination must be made pursuant to Labor Code Sections 4663 and 4664 set forth in the form:

Labor Code section 4663. Apportionment of permanent disability; Causation as basis; Physician's report; Apportionment determination; Disclosure by employee.

(a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

Labor Code section 4664. Liability of employer for percentage of permanent disability directly caused by injury; Conclusive presumption from prior award of permanent disability; Accumulation of permanent disability awards.

(a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.

(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

(c)(1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:

(A) Hearing.

(B) Vision.

(C) Mental and behavioral disorders.

(D) The spine.

(E) The upper extremities, including the shoulders.

(F) The lower extremities, including the hip joints.

(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

(2) Nothing in this section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.

The form further provides the following questions to be answered in the affirmative or negative:

	Yes	No
Is the permanent disability directly caused, by an injury or illness arising out of and in the course of employment?	☐	☐
Is the permanent disability caused, in whole or in part, by other factors besides this industrial injury or illness, including any prior industrial injury or illness?	☐	☐

If the answer to the second question is "yes," provide below: (1) the approximate percentage of the permanent disability that is due to factors other than the injury or illness arising out of and in the course of employment; and (2) a complete narrative description of the basis for your apportionment finding. If you are unable to include an apportionment determination in your report, state the specific reasons why you could not make this determination. You may attach your findings and explanation on a separate sheet.

7. Section 9785.4. Primary Treating Physician's Permanent and Stationary Report (PR-4).

This section was added to the Labor Code to create a DWC Form PR-4. Just as the DWC-PR-3, this form will be used by the primary treating physicians to submit their permanent and stationary reports, but it is required to be used for ratings prepared pursuant to the 2005 Permanent Disability Rating Schedule and the AMA Guides to the Evaluation of Permanent Impairment (5th Edition).

8. Section 9805. Schedule for Rating Permanent Disabilities, Adoption, Amendment.

Section 9805, as amended, provides that the method for the determination of percentages of permanent disability is set forth in the Schedule for Rating Permanent Disabilities, which has

been adopted by the Administrative Director effective January 1, 2005, and which shall be amended at least once every five years. This section provides that the schedule is adopted and incorporated by reference in its entirety as though it were set forth in the regulation, and it further provides that the schedule adopts and incorporates by reference the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment*, 5th Edition. This section further provides that the schedule shall be effective for dates of injury on or after January 1, 2005, and in accordance with subdivision (d) of Labor Code section 4660, and that the schedule may be downloaded from the Division of Workers' Compensation website at http://www.dir.ca.gov/dwc/dwcrep.htm.

9. Section 10150. Disability Evaluation Unit.

Section 10150, as amended, provides that the Disability Evaluation Unit, under the direction and authority of the Administrative Director, will issue permanent disability ratings as required under this subchapter utilizing the Schedule for Rating Permanent Disabilities adopted by the Administrative Director. It further provides that the Disability Evaluation Unit will prepare the following kinds of rating determinations: (a) Formal rating determinations; (b) Summary rating determinations; (c) Consultative rating determinations; and (d) Informal rating determinations.

10. Section 10151. Schedule for Rating Permanent Disabilities.

Section 10151 is deleted as redundant.

The schedule for permanent disability rating is revised pursuant to Section 4660 in order to: (1) incorporate the AMA Guides to describe the nature of a physical injury or disfigurement, (2) give consideration to an employee's diminished future earning capacity by formulating an adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies, and (3) promote consistency, uniformity, and objectivity. A description of the schedule is set forth below:

SECTION 1—INTRODUCTION AND INSTRUCTIONS

I. Introduction

Generally, the introduction section of the Schedule for Rating Permanent Disabilities (hereinafter referred to as the "Schedule") indicates that the Schedule is adopted by the Administrative Director pursuant to Labor Code section 4660. It further states that the statute requires that the schedule be amended at least once every five years.

This section states that the extent of permanent disability that results from an industrial injury can be assessed once an employee's condition becomes permanent and stationary, and sets forth the definition of the term "permanent and stationary" as the point in time when the employee has reached maximal medical improvement (MMI), meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

This section further indicates that the calculation of a permanent disability is initially based on a evaluating physician's impairment rating, in accordance with the medical evaluation protocols and rating procedures set forth in the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment, 5th Edition*, which is incorporated by reference and thereafter referred to as the "AMA Guides."

This section also provides that initial impairment ratings are consolidated by body part and converted to a whole person impairment rating (hereinafter referred to as "impairment standard"). The impairment standard is then adjusted to account for the diminished future earning capacity, occupation and age at the time of injury to obtain a final permanent disability rating.

This section further clarifies that a disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity, while 100% represents permanent total disability. A rating between 0% and 100% represents permanent partial disability. Permanent total disability represents a level of disability at which an employee has sustained a total loss of earning capacity. Some impairments are conclusively presumed to be totally disabling. (Lab. Code, §4662.)

This section also states that each rating corresponds to a fixed number of weeks of compensation. Compensation is paid based on the number of weeks and the weekly compensation rate, in accordance with Labor Code section 4658.

II. Rating Procedures

A. Use of the AMA Guides

This section of the Schedule indicates that the AMA Guides are used by evaluating physicians to determine the extent of an individual's impairment. The Guides use different scales to describe impairment for different parts and regions of the body. For example, finger impairment is measured using a finger scale that can range from 0% to 100%. Other commonly used scales in the Guides are the hand, upper extremity, foot, lower extremity and whole person scales.

It further states that the scales that correspond to different body regions are equivalent to a percentage of the whole person scale; therefore, these scales are converted to the whole person scale to determine the appropriate impairment rating. For example, an upper extremity impairment in the range of 0% to 100% is equivalent to a whole person impairment in the range of 0% to 60%. The upper extremity impairment is converted to a whole person impairment by multiplying by .6.

This section further indicates that when combining two or more ratings to create a composite rating, the ratings must be expressed in the same scale (this method is further explained in the section on Combining Disabilities).

It also indicates that the whole person impairment scale is referred to as WPI (whole person impairment). The upper and lower extremity scales are referred to as UE (upper extremity) and LE (lower extremity), respectively.

This section further provides that a final permanent disability rating is obtained only after the impairment rating obtained from an evaluating physician is adjusted for diminished future earning capacity, occupation and age at the time of injury.

B. Calculation of Rating

This section of the Schedule indicates that the schedule utilizes an impairment number and an impairment standard. The impairment standard is then modified to reflect diminished future earning capacity, the occupation and the age at the time of injury.

1. Impairment Number

This section of the Schedule indicates that the impairment number identifies the body part, organ system and/or nature of the injury and takes the form of "xx.xx.xx.xx". The first two digits correspond to the chapter number in the AMA Guides which address the body part/organ system. Subsequent pairs of digits further refine the identification of the impairment.

It provides the following example: Soft tissue lesion of the neck rated under the range of motion (ROM) method would be represented as follows:

15. – 01. – 02. – 02

Spine – Neck – ROM method – Soft tissue lesion

The section further indicates that using Section 2 of the Permanent Disability Rating Schedule, an appropriate impairment number can be found for most impairments.

2. Impairment Standard

This section of the Schedule provides that after identification of the appropriate disability number(s), the next step is to calculate all relevant impairment standard(s) for the impairments being evaluated. An impairment standard is a whole person impairment rating under the AMA Guides, provided by the evaluating physician.

It further indicates that if an impairment based on an objective medical condition is not addressed by the AMA Guides, physicians should use clinical judgment, comparing measurable impairment resulting from the unlisted objective medical condition to measurable impairment resulting from similar objective medical conditions with similar impairment of function in performing activities of daily living.

It further provides that a single injury can result in multiple impairments of several parts of the body. For example, an injury to the arm could result in limited elbow range of motion and shoulder instability. It further states that multiple impairments must be combined in a prescribed manner to produce a final overall rating.

This section of the Schedule states that it is not always appropriate to combine all impairment standards resulting from a single injury, since two or more impairments may have a duplicative effect on the function of the injured body part. The AMA Guides provide some direction on what impairments can be used in combination. Lacking such guidance, it is necessary for the evaluating physician to exercise his or her judgment in avoiding duplication.

This section of the Schedule further provides that the impairment standard is assumed to represent the degree of impairment for a theoretical average worker, i.e., a worker with average occupational demands on all parts of the body and at the average age of 39.

3. Adjustment for Diminished Future Earning Capacity (FEC)

This section of the Schedule provides that the adjustment for diminished future earning capacity (FEC) loss is applied to the impairment standard in accordance with procedures outlined in section 2 of the Schedule. An impairment must be expressed using the whole person impairment scale before applying the FEC adjustment.

This section of the Schedule further provides that the methodology and FEC Adjustment table is premised on a numerical formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The empirical data was obtained from the interim report, "Evaluation of California's Permanent Disability Rating Schedule (December 2003), prepared by the RAND Institute for Justice. The result is that the body injury categories are placed into different ranges (based on the ratio of standard ratings to proportional wage losses). Each of these ranges will generate a FEC adjustment between 10% and 40% for each injury category.

(a) Summary of the Methodology:

This section of the Schedule summarizes the methodology for arriving at the adjustment for diminished future earning capacity formula as follows:

1. RAND data was used to establish the ratio of average California standard ratings to proportional wage losses for each of 22 injury categories. (*Data for Adjusting Disability Ratings to Reflect Diminished Future Earnings and Capacity in Compliance with SB 899*, December 2004, RAND Institute for Civil Justice, Seabury, Reville, Neuhauser, http://www.rand.org/publications/WR/WR214/.) These ratios are listed in Table B below.

2. The range of the ratios for all body injury categories is .45 to 1.81. This numeric range was divided into eight evenly spaced ranges. (See the Range of Ratios columns in Table A below.) Each injury category will fall within one of these eight ranges, based on its rating/wage loss ratio.

3. A series of FEC adjustment factors were established to correspond to the eight ranges described above. (See column 4 of Table A below.) The smallest adjustment factor is a 1.1000 which will result in a 10% increase when applied to the AMA whole person impairment rating. The largest is 1.4000 which will result in a 40% increase. The six intermediate adjustment factors are determined by dividing the difference between 1.1 and 1.4 into seven equal amounts.

4. The formula for calculating the maximum and minimum adjustment factors is **([1.81/a] x .1) +1** where a equals the minimum or maximum rating/loss ratio from Table B below. AMA whole person impairment ratings for injury categories that correspond to a greater relative loss of earning capacity will receive a higher FEC adjustment. For example, a psychiatric impairment receives a higher FEC adjustment because RAND data shows that a relatively high wage loss corresponds to the average psychiatric standard permanent disability rating. A hand impairment would receive a lower FEC adjustment because RAND data shows a relatively low wage loss relative to the average psychiatric standard permanent disability rating.

This section of the Schedule further provides that the FEC rank and adjustment factors that correspond to relative earnings for the eight evenly-divided ranges are listed below in Table A. The ratio of earnings to losses and the corresponding rank for each injury category are listed below in Table B. To adjust an impairment standard for earning capacity, multiply it by the appropriate adjustment factor from the Table B and round to the nearest whole number percentage. Alternatively, a table is provided at the end of Section 2 of the Schedule which provides the earning capacity adjustment for all impairment standards and FEC ranks.

Table A

Range of Ratios			
Low	**High**	**FEC Rank**	**Adjustment Factor**
1.647	1.810	One	1.1000
1.476	1.646	Two	1.1429
1.305	1.475	Three	1.1857
1.134	1.304	Four	1.2286
0.963	1.133	Five	1.2714
0.792	0.962	Six	1.3143
0.621	0.791	Seven	1.3571
0.450	0.620	Eight	1.4000

Table B

Part of the Body	Ratio of Rating over Losses	FEC Rank
Hand/fingers	1.810	One
Vision	1.810	One
Knee	1.570	Two
Other	1.530	Two
Ankle	1.520	Two
Elbow	1.510	Two
Loss of grasping power	1.280	Four
Wrist	1.210	Four
Toe(s)	1.110	Five
Spine Thoracic	1.100	Five
General lower extremity	1.100	Five
Spine Lumbar	1.080	Five
Spine Cervical	1.060	Five
Hip	1.030	Five
General upper extremity	1.000	Five
Heart disease	0.970	Five
General Abdominal	0.950	Six
PT head syndrome	0.930	Six
Lung disease	0.790	Seven
Shoulder	0.740	Seven
Hearing	0.610	Eight
Psychiatric	0.450	Eight

The FEC Rank for the "Other" category is based on average ratings and proportional earning losses for the following impairments:

Impaired rib cage
Cosmetic disfigurement
General chest impairment
Facial disfigurement or impairment
Impaired mouth or jaw
Speech impairment
Impaired nose
Impaired nervous system
Vertigo
Impaired smell
Paralysis
Mental Deterioration
Epilepsy
Skull aperture

4. Occupational Grouping

This section of the Schedule provides that after the rating is adjusted for diminished future earning capacity, it is then modified to take into account the requirements of the specific occupation that the employee was engaged in when injured.

It further provides that the Schedule divides the labor market into 45 numbered occupational groups. Each group is assigned a three-digit code called an occupational group number. The first digit of the code refers to the arduousness of the duties, ranking jobs from 1 to 5 in ascending order of physical arduousness; the second digit separates occupations into broad categories sharing common characteristics; the third digit differentiates between occupations within these groups.

This section of the Schedule further indicates that the appropriate occupational group number can be identified by looking up the occupation in the list contained in Section 3A of the Schedule. Each job title is listed along with its corresponding group number. The appropriate occupation can generally be found listed under a scheduled or alternative job title. If the occupation cannot be found, an appropriate occupational group is determined by analogy to a listed occupation(s) based on a comparison of duties. This section further provides that the table Occupational Group Characteristics in Section 3C of the Schedule provides a description of each occupational group to facilitate the determination of a group number.

5. Occupational Variant

This section of the Schedule references section 4 of the Schedule, which contains tables that cross-reference impairment numbers and occupational group numbers to produce an "occupational variant," which is expressed as a letter. These tables are designed so that variant "F" represents average demands on the injured body part for the particular impairment being rated, with letters "E", "D" and "C" representing progressively lesser demands, and letters "G" through "J" reflecting progressively higher demands.

6. Occupational Adjustment

This section of the Schedule provides that after adjusting for diminished future earning capacity, the rating is adjusted next for occupation by reference to tables found in Section 5 of the Schedule. One can find the earning capacity-adjusted rating in the column entitled "Rating" and read across the table to the column headed with the appropriate occupational variant. The intersection of the row and column contains the occupation-adjusted rating.

7. Age Adjustment

This section of the Schedule indicates that after all the previous steps have been completed, then the rating is adjusted to account for the worker's age on the date of injury. Section 6 of the Schedule contains tables for determining the age adjustment. One can find the occupation-

adjusted rating in the column entitled "Rating" and read across the table to the column with the injured worker's age on the date of injury.

8. Final Permanent Disability Rating

This section of the Schedule provides that the number identified on the age adjustment table represents the final overall permanent disability rating percentage for a single impairment. (There is a reference to Subdivisions C.1. and C.2. of the schedule, page 11, concerning the combining of multiple impairments and disabilities.)

9. Rating Formula

This section of the Schedule provides that the final rating is generally expressed as a rating formula, as in the following example:

15.01.02.02 – 8% - 10% - 470H – 13% – 11%

The section indicates that each component is described as follows:

15.01.02.02 – Impairment number for cervical spine, soft tissue lesion

8% – Impairment standard

10% – Rating after adjustment for earning capacity

470 – Occupational group number for Furniture assembler, heavy

H – Occupational variant

13% – Rating after occupationally adjustment

11% – Rating after age adjustment

C. Additional Rating Procedures

1. Formula for combining impairments and disabilities

This section of the Schedule provides the formula for combining impairments and disabilities it provides that impairments and disabilities are generally combined using the following formula where a and b are the decimal equivalents of the impairment or disability percentages:

$$a + b(1-a)$$

This section of the Schedule further provides the following example: The result of combining 15% and 25% would be calculated as follows:

.15 + .25(1-.15)
.15 + .25(.85)
.15 + .2125 = .3625 = 36%

This section further provides that the impairment ratings must be expressed in the same scale to be combined. For example, it would be inappropriate to combine 15% UE with 20% WPI. Likewise, one cannot combine an impairment rating with a disability rating.

This section of the Schedule indicates that except as specified in the section "Adjusting AMA Impairments and Combining Ratings," when combining three or more ratings on the same scale into a single rating, combine the two largest first, rounding the result to the nearest whole percent. Then combine that result with the next largest rating, and so on, until all ratings are combined. Each successive calculation result must be rounded before performing the next.

2. Adjusting AMA Impairments and Combining Ratings

This section provides that as used in the Schedule, the term "adjusting" refers to adjusting an AMA impairment rating for diminished future earning capacity, occupation and age.

The section further provides that except as specified below, all impairments are converted to the whole person scale, adjusted, and then combined to determine a final overall disability rating.

This section further indicates that multiple impairments involving the hand or foot are combined using standard AMA Guides protocols. The resulting upper or lower extremity impairment is converted to a whole person impairment and adjusted before being combined with other impairments of the same extremity.

It further provides that multiple impairments involving a single part of an extremity, e.g. two impairments involving a shoulder such as shoulder instability and limited range of motion, are combined at the upper extremity level, then converted to whole person impairment and adjusted before being combined with other parts of the same extremity. It notes that some impairments of the same body part may not be combined because of duplication.

This section further states that impairments with disability numbers in the 16.01 and 17.01 series are converted to whole person impairment and adjusted before being combined with any other impairment of the same extremity.

It also states that impairments of an individual extremity are adjusted and combined at the whole person level with other impairments of the same extremity before combination with impairments of other body parts. For example, an impairment of the left knee and ankle would be combined before combination with an impairment of the opposing leg or the back.

This section also states that the composite rating for an extremity (after adjustments) may not exceed the amputation value of the extremity adjusted for earning capacity, occupation and age.

The occupational variant used to rate an entire extremity shall be the highest variant of the involved individual impairments.

3. Rating Impairment based on Pain

This section of the Schedule provides that pursuant to Chapter 18 of the Guides, a whole person impairment rating based on the body or organ rating system of the Guides (Chapters 3 through 17) may be increased by up to 3% WPI if the burden of the worker's condition has been increased by pain-related impairment in excess of the pain component already incorporated in the WPI rating in Chapters 3-17. (AMA, p. 573.)

It further provides that a physician may perform a formal pain-related impairment assessment if deemed necessary to justify the increase of an impairment rating based on the body or organ rating system. (See Section 18.3f of the AMA Guides starting on page 575.)

It also states that the maximum allowance for pain resulting from a single injury is 3% WPI, regardless of the number of impairments resulting from that injury.

This section of the Schedule further indicates that the addition of up to 3% for pain is to be made at the whole person level. For example, if an elbow impairment were to be increased by 3% for pain, the rating for the elbow would first be converted to the whole person scale, and then increased. The resultant rating would then be adjusted for diminished future earning capacity, occupation and age.

This section also indicates that in the case of multiple impairments, the evaluating physician shall, when medically justifiable, attribute the pain in whole number increments to the appropriate impairments. The additional percentage added for pain will be applied to the respective impairments as described in the preceding paragraph.

4. Rating Psychiatric Impairment

This section of the Schedule provides that psychiatric impairment is to be evaluated by the physician using the Global Assessment of Function (GAF) scale. The resultant GAF score is then converted to a whole person impairment rating using the GAF conversion table.

(a) Instructions for Determining a GAF Score

This section of the Schedule sets forth step by step instructions for determining a GAF score.

(b) Global Assessment of Function (GAF) Scale

This section of the Schedule requires that psychological, social, and occupational functioning be considered on a hypothetical continuum of mental health-illness. It instructs that impairment in

functioning due to physical (or environmental) limitations not be included. It further sets forth the GAF scale.

(c) Converting the GAF Score to a Whole Person Impairment

This section of the Schedule sets forth a table which converts the GAF score to a whole person impairment. It instructs the reader to locate the GAF score in the table and read across to determine the corresponding whole person impairment score.

SECTION 2—IMPAIRMENT NUMBER/EARNING CAPACITY ADJUSTMENT

Section 2 replaces the disability number section 2 in the 1997 Permanent Disability Rating Schedule with impairment numbers. It further replaces the disability descriptions of section 2 of the 1997 Permanent Disability Rating Schedule with impairment descriptions. Further, section 2 adds the future earning capacity rank for each listed impairment. The introduction in Section 2 states that if the impairment (based on an objective medical condition) is not addressed by the AMA Guides, the user is required to choose the closest applicable impairment number. A table at the end of Section 2 enables the user to apply the earning capacity adjustment to any impairment standard rating. The

SECTION 3—OCCUPATIONS AND GROUP NUMBERS

This section of the Schedule remains the same as the 1997 Permanent Disability Rating Schedule, except that it was amended to add the following occupations and group numbers:

Alarm Service Technician (business ser.) – 380
Auto Painter (any industry) – 321
Baggage screener, airport (air transport.) – 212
Bicycle messenger – (business ser.) – 493
Bounty hunter (business ser.) – 390
Bowler, professional (amuse. and rec.) - 493
Cable car operator (r.r. transportation) – 350
CAD designer – (profess. & kindred) – 120
Card dealer (amusement and rec.) – 211
Cartographer (prof. & kindred) – 120
Checker, warehouse (retail trade) – 360
Coffeemaker (hotel & rest.) – 322
Community organization worker (social serv.) – 111
Community service officer, patrol (social serv.) – 250
Computer set-up person (business serv.)– 320
Courier (any industry) – 250
Dietary Aide, Hospital Services (medical ser.) – 322
Fire inspector (government serv.) – 490
Flagger, Traffic Control (construction) – 213
Glass blower, hand (glass mfg.) – 221

Golf instructor (amuse. and rec.) – 390
Golfer, professional (amuse. and rec.) – 493
Hand Labeler (any ind.) – 211
Inmate, laborer (any industry) – 460
Loader/unloader (any industry) – 460
Newscaster (radio-tv broad.) – 210
Nurse case manager (medical services) – 212
Painter, traffic line (construction) – 350
Patrol officer, volunteer (government serv.) – 250
Pit boss/floor person (amusement & rec.) – 214
Produce Clerk, Retail (retail trade) – 360
School Principal (education) – 212
Set-up person/trade show (retail trade) – 360
Ski instructor (amuse. and rec.) – 493
Ski lift operator (amuse. and rec.) – 240
Ski patroller (amuse. and rec.) – 590
Smog Technician (automotive ser.) – 370
Surgical technician (medical serv.) – 212
Ticket inspector, transportation (r.r. transportation) – 213
Truss Builder, Construction (construction) – 380
Waysman (ship-boat mfg.) – 481
Wind Turbine Technician (construction; utilities) – 482

The section was further amended to reclassify the occupational group number of aerobic instructor (amusement and rec.) – from 390 to 493

Further, this section was reorganized. Part A contains an alphabetized list of occupations with their scheduled occupational group numbers. Part B and Part C were added to the schedule. Part B contains an occupational group chart which illustrates the overall system for classifying occupations into groups. Part C contains a description and sample occupations of each group.

SECTION 4—OCCUPATIONAL VARIANTS

This section was not changed, and remains the same as it is in the 1997 Permanent Disability Rating Schedule.

SECTION 5—OCCUPATIONAL ADJUSTMENT

This section was not changed, and remains the same as it is in the 1997 Permanent Disability Rating Schedule.

SECTION 6—AGE ADJUSTMENT

This section was not changed, and remains the same as it is in the 1997 Permanent Disability Rating Schedule.

SECTION 7— EXAMPLES

This section of the Schedule replaces former Section 79a of the 1997 Permanent Disability Rating Schedule, "Tables and Procedures." This section sets forth rating examples illustrating all the basic components of disability rating, including converting AMA scales, adjusting for diminished future earning capacity, occupation and age.

SECTION 8— COMBINED VALUES CHART

This section of the Schedule replaces former Section 79b of the 1997 Permanent Disability Rating Schedule, "Combining Multiple Disabilities." It now provides the "Combined Values Chart," at pp. 604-606 of the AMA Guides.

11. Section 10152. Disability, When Considered Permanent

Section 10152, as amended, provides that a disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

12. Section 10156. Formal Rating Determinations.

Section 10156, as amended, provides that a formal rating determination will be prepared by the Disability Evaluation Unit when requested by the Appeals Board or a Workers' Compensation Administrative Law Judge on a form specified for that purpose by the Administrative Director. The form will provide for a description of the disability to be rated, the occupation of the injured employee, the employee's age at the time of injury, the date of injury, the formula used, and a notice of submission in accordance with Appeals Board Rules of Practice and Procedure.

13. Section 10158. Formal Rating Determinations As Evidence.

Section 10158, as amended, provides that formal rating determinations prepared by disability evaluators shall be deemed to constitute evidence only as to the relation between the disability or impairment standard(s) described and the percentage of permanent disability.

14. Section 10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.

Section 10160(c), as amended, provides that the insurance carrier, self-insured employer or injured worker shall complete a Request for Summary Rating Determination (DEU Form 101), a copy of which shall be served on the opposing party. The requesting party shall send the request, including proof of service of the request on the opposing party, to the Qualified Medical Evaluator together with all medical reports and medical records relating to the case prior to the scheduled examination with the Qualified Medical Evaluator. The request shall include the

appropriate address of the Disability Evaluation Unit. A listing of all of the offices of the Disability Evaluation Unit, with each office's area of jurisdiction, will be provided, upon request, by any office of the Disability Evaluation Unit or any Information and Assistance Office.

Section 10160(d), as amended, provides that when a summary rating determination has been requested, the Qualified Medical Evaluator shall submit all of the following documents to the Disability Evaluation Unit at the location indicated on the DEU Form 101 and shall concurrently serve copies on the employee and claims administrator:

Section 10160(f), as amended, provides that any request for the rating of a supplemental comprehensive medical evaluation report shall be made no later than twenty days from the receipt of the report and shall be accompanied by a copy of the correspondence to the evaluator soliciting the supplemental evaluation, together with proof of service of the correspondence on the opposing party.

15. Section 10163. Apportionment Referral

Section 10163 is a Disability Evaluation Unit Form (DEU Form 105) which is used by the Presiding Workers" Compensation Administrative Law Judge to request that the DEU evaluate a report indicating that part of or all of the permanent disability may be subject to apportionment.

DEU Form 105 is amended to delete the language in the form referring to the "Office of Benefit Determination" as this office no longer exits and has been replaced by the Disability Evaluation Unit.

DEU Form 105, as amended, provides that the formal medical evaluation report attached to the form indicates that part or all of the permanent disability may be subject to apportionment pursuant to Labor Code Section 4663 and/or Labor Code Section 4664, and requests that the Workers' Compensation Administrative Law Judge determine whether the apportionment is inconsistent with the law. It also revised the proviso with respect to a Workers' Compensation Administrative Law Judge's referral of a report back to a medical evaluator to clarify this procedure and to eliminate reference to the word "evidence," which term is inappropriate given the informal, non-judicial nature of this procedure. Thus, the sentence "[i]f you refer the report back to the medical evaluator for correction or clarification, and you receive no response within 30 days, please make a determination based on the available evidence," was deleted and replaced with the following language: "If you believe the apportionment is inconsistent with the law, you may refer the report back to the medical evaluator for correction or clarification. If you receive no response from the medical evaluator within 30 days from your request, please make your determination based on the original report."

DEU Form 105, as amended, further provides that after checking the appropriate space as to whether the apportionment is consistent with the law or not, the Workers' Compensation Administrative Law Judge is required to sign and date the bottom of this form and return it with the medical report to the DEU office listed on the form.

16. Section 10165.5. Notice of Options Following Permanent Disability Rating (DEU Form 110)

DEU Form 110 is a form used by DEU to notify the injured worker of his or her options following a permanent disability rating determination. The heading of form DEU Form 110 has been amended to correct the heading of the form, to delete the name of former Governor Pete Wilson, and to insert the Disability Evaluation Unit name.

The first paragraph of DEU Form 110 has been amended to provide that this is a permanent disability rating determination (Rating) prepared by the State of California Disability Evaluation Unit within the Division of Workers' Compensation. It describes the employee's percentage of permanent disability based a report by the employee's doctor, potential loss of future earning capacity, age, and the type of work at the time of injury.

The first paragraph of DEU Form 110 under the heading "Special Notice to Unrepresented Injured Workers," has been amended to provide that if the injured employee disagrees with the rating because he or she believes that the rating was improperly calculated or that the doctor failed to address any or all issues or failed to properly rate his or her impairment, he or she may request administrative review of the rating within 30 days of receipt of the rating, from the Administrative Director of the Division of Workers' Compensation. It further provides that in some cases, he or she may be entitled to an additional medical evaluation or a different medical specialist. It indicates that his or her request should include a copy of the rating and a copy of the report from the doctor. A copy of the request must be sent to the employee's claims adjustor.

The second paragraph of DEU Form 110 under the heading "Special Notice to Unrepresented Injured Workers," has been amended to provide that if the injured employee has questions about whether to request administrative review of his or her rating or whether another medical evaluation is appropriate, he or she should contact the local Information and Assistance Officer listed in the state government section of his or her telephone book under Department of Industrial Relations, Division of Workers' Compensation. The term "administrative review" of a rating replaces the former term "reconsideration" of a rating, in order to avoid confusion with the procedure for seeking reconsideration of a Workers' Compensation Administrative Law Judge's decision.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to the Division of Workers' Compensation or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.

FISCAL IMPACTS

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code:

None. The proposed regulations do not apply to any local agency or school district.

Other nondiscretionary costs/savings imposed upon local agencies:

None. The proposed regulations do not apply to any local agency.

Costs or savings to state agencies or costs/savings in federal funding to the State:

None.